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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

BLACK CARD LLC, a Wyoming Limited
Liability Company,

Plaintiff,

v.

AMERICAN EXPRESS MARKETING &
DEVELOPMENT CORP. a Delaware corporation;
AMERICAN EXPRESS TRAVEL RELATED
SERVICES COMPANY, INC. a New York
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 10cv0025-D

**AFFIDAVIT OF MICHAEL T. HORNAK IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO STAY,
EXTEND TIME TO RESPOND TO, OR DISMISS WITHOUT PREJUDICE
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

I, Michael T. Hornak, being first duly sworn upon oath, do depose and say as follows:

1. I am a partner with Rutan & Tucker, LLP, counsel for plaintiff Black Card LLC ("BC") in the above-captioned matter. I am admitted to practice in the State of California and various United States District Courts and Courts of Appeal. I am admitted to practice before this Court, pro hac vice. I make this Declaration in support of BC's Opposition to Defendants' Motion to Stay, Extend Time to Respond to, or Dismiss Without Prejudice, Plaintiff's Motion for Summary Judgment. I make this Affidavit based on my own personal knowledge, and if called upon as a witness, I could and would competently testify thereto.

2. Attached as Exhibit "A" is a true and correct copy of "American Express Company's Opposition to Defendants' Motion to Dismiss the Complaint Pursuant to FRCP 12(b)(1)", filed in connection with Southern District of New York case no. 05-CV-1555, which my office obtained on-line through the Court's ECF system.

3. I am informed and believe that, on September 22, 2010 at approximately 1:10 p.m. PDT, Natalie Gowin of my office received a telephone call from Eric Meyer, counsel for defendants American Express Marketing & Development Corp. and American Express Travel Related Services Company (collectively, "AmEx"). I am informed and believe that Mr. Meyer asked whether BC would withdraw its Motion for Partial Summary Judgment ("MPSJ"). I am

further informed and believe that Ms. Gowin advised Mr. Meyer that our office would respond to his request shortly.

4. On September 22, 2010, at 3:27 p.m. PDT, I received an email from Mr. Meyer asking again whether BC would withdraw its MPSJ. I responded to Mr. Meyer's email in an email advising that my office had not been able, within the past two hours, to contact our client and respond fully to Mr. Meyer's request. I also informed Mr. Meyer that BC would be willing to discuss reasonable briefing schedules for AmEx's Opposition to the MPSJ and invited Mr. Meyer to propose such a schedule.

5. On September 23, 2010, I sent an email to Mr. Meyer advising him that BC would stipulate to a two week extension of time for AmEx's Opposition to the MPSJ. Mr. Meyer responded via email stating that a two week extension of time is not adequate to address AmEx's concerns.

6. On April 19, 2010, my office propounded BC's first set of interrogatories to AmEx. Attached as Exhibit "B" is a true and correct copy of the interrogatories propounded by my office.

7. On July 21, 2010, my office received AmEx's second set of requests for production of documents to BC. Since that time, my office has received no further discovery requests propounded to BC by AmEx.

8. On July 21, 2010, my office received a service copy of a subpoena to third-party The Digital Forces LLC served on behalf of AmEx. Since that time, my office has received no further notices of third-party discovery propounded by AmEx.

Further, affiant sayeth not.

Dated this 28th of September, 2010.


Michael T. Hornak

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

The foregoing Affidavit of Michael T. Hornak was subscribed and sworn to before me this 28th day of September, 2010.

WITNESS my hand and official seal.

*See attached document
Acknowledgment*

Notary Public

My Commission expires: _____.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange }On Sept 28, 2010 before me, DEBORAH E. CORWIN,
Date Here Insert Name and Title of the Officerpersonally appeared Michael T. HORWAR
Name(s) of Signer(s)

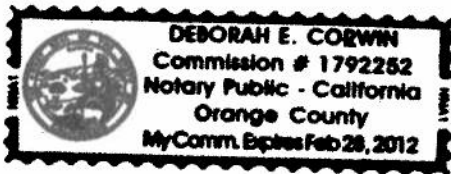
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Deborah E. Corwin

Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached DocumentTitle or Type of Document: Affidavit in Opposition to MotionDocument Date: 9-28-10 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: Michael T. HORWAR

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

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OF SIGNER
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